Yick & Co.", and so is necessarily within the scope of the authority residing in the persons who conduct that business for an absentee principal.

Whether the person who signed P13 on the Chop of "Khim Yick & Co.", i.e., Chong Thian Yew, is the same person as the witness "Chong Thian Yew" who described himself as "Cashier" of the firm is not recorded but he probably is.

It is to be noted that the acceptance by the firm of the Bill of Exchange (Exhibit P1) on 30th January, 1940, is also made by the same chop and signature.

It is evident that the "authority" to "Loon On" has been acted upon both by "Loon On" and by the firm "Khim Yick & Co." and so ratified by the conduct of the Manager of the firm. Its validity was not questioned when evidence was given at the trial by witnesses who referred to it, including the appellant.

I conclude therefore that "Loon On" was an agent of "Khim Yick & Co." within the meaning of section 124 of the Enactment, and therefore the agent of this appellant who is "Khim Yick & Co."

I therefore set aside the conviction and sentence under section 114 (i) (h) of the Enactment and substitute a conviction under section 113 (i).

I convict the appellant under section 113 (i) and sentence him to a fine of $1,000 in default two months' rigorous imprisonment.

A point arose in connection with the conviction under section 114 (i) (h) as regards the sentence which it will be useful for me to pronounce upon.

The section provides for the fine being calculated as a multiple of the duty, i.e., from six to twenty times.

In so calculating the fine, the Magistrate took the amount of the total duty. That I think is wrong—the words "amount of duty" mean the "amount of the duty evaded", i.e., the difference between the duty calculated on the true values, etc., and the duty actually paid.

Conviction confirmed but varied. Sentence reduced.

KANNAPPA CHETTIAR vs. KARUPPAN CHETTIAR AND OTHERS.

[Original Civil Jurisdiction (Cussen, J.), October 15, 1940]

Civil Procedure Code (Cap. 7), section 35—Recognized agent—Partnership—Suit in name of partner for partnership debt—Verification of plaint by attorney of partner—Attorney also manager of partnership business.

This action was brought in the personal name of a partner for money due to the partnership. The plaint was signed by the attorney of the plaintiff under a power of attorney which did not purport to confer powers in respect of the partnership business. In fact, the attorney was in charge of and managed the partnership business.

Held, (1) that the plaint should be amended by substituting the name of the partnership for that of the present plaintiff:

(2) that although the signature of the plaint by the attorney of the plaintiff in that capacity might be bad, it was good in his capacity of agent and manager of the firm under section 35 (b) of the Civil Procedure Code.

P. R. N. N. Firm v. Soona Navana Firm (judgment infra) followed.

Cases referred to:—

(1) *Court v. Berlin* (1897) 2 Q.B. 399.

(2) *RM. K. R. M. vs. V. RM. V.* L. (1926) A.C. 761.

(3) *P. R. N. N. Firm vs. Soona Navana Firm* Judgment given in footnote.

R. Ramani for plaintiff.

C. Mills for defendants.

Mills.—Plaintiff described as P. R. N. N. Kannappa Chettiar of Kuala Lumpur—The plaint is signed and verified by Vellasamy Pillai—The money is said to be due to the firm of P. R. N. N.

For the purpose of this part of my argument, the partners are (1) Kannappa Chettiar, (2) Valliammai Achi and (3) Sithamparam Chettiar—The old rule was that all partners should be plaintiffs because the cause of action was a joint cause of action—Section 404 of the Civil Procedure Code remedied this inconvenience by enabling them to sue in the name of the firm—The position therefore is either all the partners can sue in their joint names or the suit is brought in the name of the firm. In this case neither has been done—I say in fact there is no such person as P. R. N. N. Kannappa Chettiar. The suit ought to be dismissed on that ground alone.

Further Vellasamy Pillai signs under a personal power of attorney from Kannappa Chettiar—It is not a joint power from all the partners nor a power of attorney from Kanappa Chettiar as a partner in the firm—As such he is not competent to verify this plaint

even if it is capable of amendment by substituting the name of the firm for the present plaintiff.

Ramani for the plaintiff: The suit is properly brought in the name of Kannappa Chettiar—One partner can do everything usually done on behalf of the partnership and bringing suits for the recovery of debts is one [section 251 of the Contract Enactment and *Court v. Berlin*[1]]—The vilasam of P. R. N. N. coupled to the name of Kannappa Chettiar is notice to all the world that Kannappa Chettiar is suing as partner of the P. R. N. N. Firm. *RM. K. R. M. vs. V. RM. V. L.*[2]. Such an objection is no longer fatal to the suit—*Lindley* 10th Edition p. 351. There will always be liberty to amend. If I am wrong on my submission I ask leave to amend the plaint by substituting "P. R. N. N. Firm" for the plaintiff

As to verification by Vellasamy Pillai I refer to section 35 (*b*) of the Civil Procedure Code—There is an unreported judgment of Burton, J., on this point in connection with this very firm of P. R. N. N. The suit is therefore not liable to be dismissed.

Cussen, J.—I direct plaint be amended by the substitution of P. R. N. N. Firm for the present Plaintiff and that consequential amendments to the body of the plaint be accordingly made—I hold that the plaint is properly signed and verified by Vellasamy Pillai by virtue of section 35 (*b*) of the Civil Procedure Code—In this respect I follow the unreported judgment of Burton, J., which has been cited to me.

Order accordingly.

P. R. N. N. FIRM vs. SOONA NAVANA FIRM.

[Selangor Civil Suit No. 401 of 1933]

Burton, J.—A preliminary technical point is taken in this suit which is pleaded in paragraph 4 of the Statement of Defence that P. R. N. N. Athappa Chettiar is not the recognised agent of the plaintiff firm within the meaning of the Civil Procedure Code and that the plaint is not signed or verified in accordance with the Civil Procedure Code.

Mr. Veerasamy admitted that Kannappa Chettiar is a partner of the plaintiff firm and conceded that if the nominal plaintiff had been Kannappa Chettiar he would have no ground of objection. The position is that Athappa Chettiar, the attorney of Kannappa Chettiar, a partner of the firm of P. R. N. N. has instituted a suit in the name of the firm.

P. R. N. N. is a Chettiar money-lending firm carrying on business in Kuala Lumpur, and the present suit is to recover a debt of $2,000 and interest from the defendants on a current account.

I think that there is no doubt that if Kannappa Chettiar had been in the Federated Malay States he would have been acting within the scope of his agency as a partner in instituting this suit, *see* section 251 of the Contract Enactment. The institution of such a suit would be an act usually done in carrying on a money-lending business.

But the difficulty arises because Kannappa was at all material times in India and the suit was instituted by his attorney Athappa Chettiar. Athappa Chettiar holds a Power of Attorney from Kannappa which nominates and appoints him—

> "to be my true and lawful attorney for me and in my name to do all or any of the following acts...."

and refers generally throughout to his personal affairs as well as the affairs of the firm and *(inter alia)* gives him power to sue for the firm's debts.

The sole point that I have now to decide is whether Athappa could institute this suit, in other words whether he is a recognised agent within the meaning of Chapter V of the Code. He is clearly not a recognised agent under section 35 (*a*) of the Code because he holds his Power of Attorney from Kannappa and not from the plaintiff firm, but I cannot see why he should not be a recognised agent under paragraph (*b*) of section 35. It is clear that Athappa is in charge of the firm's affairs in Kuala Lumpur, and I think he can institute the suit not as the attorney of Kannappa but as the person carrying on the business in the name of the plaintiff firm, and acting under an authority implied from the conduct of the parties, the nature of the employment, and the general practice in Chetty business, although on the particular point as to whether or not this suit should be brought the partners are in disagreement, and Nachiappa has gone so far as to send a cable to the Court asking that the suit be dismissed.

I think, therefore, that the objection is bad and that the suit should proceed.

Objection dismissed.